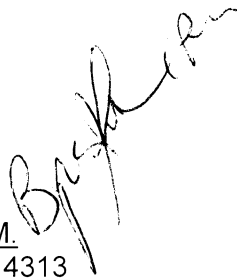


DATE: February 18, 2005  
TO: Municipal Clerk  
FROM: Byron E. Johnson, C.P.M.  
Director of Purchasing x 4313  
THRU: Aurora Wells  
Bid Clerk ext. 4038



Please place the following item on the **CONSENT** agenda for the Council Meeting of **MARCH 1, 2005**.

Item should read as follows:

Request that the Director of Purchasing be authorized to issue Purchase Order(s) as necessary to OAG Worldwide Limited to provide its licensed database platforms, including maintenance, upgrades and support, for its proprietary software, OAG Airport FlightFinder®.

OAG Worldwide Limited is the developer and exclusive sole source provider of OAG Airport FlightFinder®. As proprietor of the database platforms, OAG Worldwide Limited is the only known source that can provide the required processing and support to its proprietary software programs.

These database platforms and software programs will provide information on the Airport's Web Site concerning flights for which the departure or arrival airport is the El Paso International Airport.

Furthermore, it is requested that staff be authorized to negotiate, the City Attorney's Office to review and that the City Manager or Mayor execute any additional documents and/or licensing agreements as necessary. Funds for this expenditure shall be made available in the following account:

Department: Department of Aviation  
Funds Available: 62620003-503121-40101  
Funding Source: Airport Operating Funds  
Amount: \$7,000 (annual estimate)  
District(s): District 3 (2005-130)

Contact person: Enrique Acosta Jr., Procurement Analyst at 541-4267.

\*\*\*\*\*  
AGENDA FOR: **MARCH 1, 2005**  
\*\*\*\*\*

**CITY OF EL PASO, TEXAS  
REQUEST FOR COUNCIL ACTION (RCA)**

**DEPARTMENT:** Purchasing Department

**AGENDA DATE:** MARCH 1, 2005  
~~February 1, 2005~~

**CONTACT PERSON/PHONE:** Enrique Acosta, A.P.P. – Procurement Analyst, 541-4321

**DISTRICT(S) AFFECTED:** 3

**SUBJECT:**

Request Council to declare OAG Worldwide Limited as sole source for maintenance, upgrades and support for the El Paso International Airport's OAG Airport FlightFinder® and to authorize the Director of Purchasing to issue purchase orders in the estimated sum of \$7,000 dollars annually to OAG Worldwide Limited.

**BACKGROUND / DISCUSSION:**

The Department of Aviation initiated a technology upgrade program in 2004. The first two components of this upgrade are now in place. These are the FlightView monitor and our Terminal Wireless service. The third initiative is the O.A.G. Flight Schedule. This will allow users of the City's website to access flight schedules for El Paso International Airport and the Juarez Airport. We believe this service will benefit our business users as well as our non-business customers. This is an easy to use product that allows the customer to quickly view all non-stop and connecting flights to/from our Airport on a worldwide basis.

**PRIOR COUNCIL ACTION:**

None.

**AMOUNT AND SOURCE OF FUNDING:**

Airport Operating Funds will fund the Airport's purchases in the estimated sum of \$7,000 dollars annually. Funding is available in 62620003-503121-40101.

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** [Signature]  
(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**PURCHASING DEPARTMENT**

TO: Municipal Clerk  
FROM: Byron E. Johnson, C.P.M. *BJ*  
Director of Purchasing  
THRU: Enrique Acosta Jr. *EA*  
Procurement Analyst  
DATE: February 2, 2005

\*\*\*\*\*

Please place the following item on the CONSENT COUNCIL AGENDA for the Council Meeting of Tuesday, March 1, 2005.

Item should read as follows:

Request that the Director of Purchasing be authorized to issue Purchase Order(s) as necessary to OAG Worldwide Limited to provide its licensed database platforms, including maintenance, upgrades and support, for its proprietary software, OAG Airport FlightFinder®.

OAG Worldwide Limited is the developer and exclusive sole source provider of OAG Airport FlightFinder®. As proprietor of the database platforms, OAG Worldwide Limited is the only known source that can provide the required processing and support to its proprietary software programs.

These database platforms and software programs will provide information on the Airport's Web Site concerning flights for which the departure or arrival airport is the El Paso International Airport.

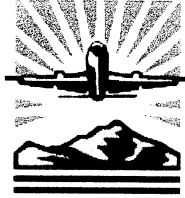
Furthermore, it is requested that staff be authorized to negotiate, the City Attorney's Office to review and that the City Manager or Mayor execute any additional documents and/or licensing agreements as necessary. Funds for this expenditure shall be made available in the following account:

Department: Department of Aviation  
Funds Available: 62620003-503121-40101  
Funding Source: Airport Operating Funds  
Amount: \$7,000 (annual estimate)  
District(s): District 3 (2005-130)

\*\*\*\*\*

MUNICIPAL CLERK'S USE: ITEM NO. \_\_\_\_\_

\*\*\*\*\*



# EL PASO INTERNATIONAL AIRPORT

TO: Enrique Acosta  
Purchasing Department

TO: Monica Lombraña  
Assistant Director of Aviation  
Development & Security

FROM: Rick Black  
Network Systems Manager

DATE: February 3, 2005

**SUBJECT: SOLE SOURCE PURCHASES FROM  
OAG WORLDWIDE LIMITED**

A handwritten signature in black ink, appearing to read "Rick Black", written over the printed name.

## **RECOMMENDATION**

Award the purchase of maintenance, upgrades and support services to OAG Worldwide Limited as sole source.

This is a sole source purchase request as no other type of software programs or services are compatible with the El Paso International Airport's OAG Airport FlightFinder®. These software programs or services can only be obtained from the manufacturer.



February 2, 2005

Enrique Acosta  
2 Civic Center Plaza  
Purchasing Department  
El Paso, TX 79901

Dear Enrique,

The following features and services qualify OAG as a "Sole Source" provider of flight schedule information to El Paso and Juarez Airport:

- ✓ OAG Worldwide, Inc. is the developer and exclusive sole source provider of the *OAG Airport FlightFinder*, an on-line Internet timetables display of flight schedules.
- ✓ OAG is the proprietor and distributor of the database platforms for the OAG Airport FlightFinder and is the only source that can provide the required processing and support (including upgrades and maintenance) to our proprietary software platforms. OAG does not use any outside vendors to sell this product. Only OAG employees are allowed to sell the OAG Airport FlightFinder.
- ✓ Upgrades to the on-line timetables display of flight schedules is limited to OAG and its employees only; therefore, OAG is the sole source for upgrading a new or existing on-line timetable display of flight schedules.
- ✓ OAG is the only flight schedule database with an excess of 950 airlines providing schedules.

Please feel free to contact me if you need any additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nancy Fleming".

Nancy Fleming  
OAG Sales Manager



OAG  
3025 Highland Parkway  
Suite 200  
Downers Grove  
IL 60515 USA

February 11, 2005

Ms. Aurora Wells  
City of El Paso  
2 Civic Center Plaza (City Hall)  
7<sup>th</sup> Floor, Purchasing Dept.  
El Paso, TX 79901

Re: Signed City of El Paso – OAG Worldwide, Inc. Master Services and License Agreement for Timetables

Dear Ms. Wells:

I am pleased to enclose triplicate-original City of El Paso – OAG Worldwide, Inc. Master Services and License Agreements for Timetables which have been signed by Joe Laughlin, Vice President of Sales, Americas, on behalf of OAG Worldwide, Inc.

I will appreciate your having the enclosed agreements executed on behalf of the City of El Paso and sending a fully executed original agreement to my attention at OAG Worldwide, Inc., 3025 Highland Parkway, Suite 200, Downers Grove, IL 60515.

If you should have any questions please do not hesitate to contact me at (630) 515-3934.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Melinda A. Breitman', written over a horizontal line.

Melinda A. Breitman  
Manager, Contracts

Enclosures (3)

# **Master Services and License Agreement For Timetables**

**Between:**



**OAG Worldwide, Inc.** with its principal place of business at 3025 Highland Parkway, Suite 200, Downers Grove, Illinois 60515

**and:**

**City of El Paso**

The City of El Paso whose place of business is located at 6701 Convair, El Paso, TX 79925 and 2 Civic Center Plaza, El Paso, TX 79901.

## MASTER SERVICES AND LICENSE AGREEMENT FOR TIMETABLES

THIS MASTER AGREEMENT is made the 23rd day of February, 2005 (the "Effective Date") by and between **OAG Worldwide Inc.**, a Delaware corporation with its principal place of business at 3025 Highland Parkway, Suite 200, Downers Grove, Illinois 60515 (hereinafter "OAG") and **City of El Paso** with its principal place of business at 6701 Convair, El Paso, TX 79925 and 2 Civic Center Plaza, El Paso, Texas 79901 (hereinafter "Customer").

### 1 Definitions

As used herein, the following terms shall have the meanings specified:

- 1.1 "Format" means the file type for the provision of the Timetables and, if applicable, Software, specified in a Schedule;
- 1.2 "Charges" mean those fees and charges specified in a Schedule;
- 1.3 "Customer System" means a Customer-owned or controlled system which is defined in a Schedule;
- 1.4 "Initial Term" means an initial term defined in a Schedule.
- 1.5 "Master Agreement" means the terms and conditions of this Master Services and License Agreement for Timetables, applicable Schedules and amendments.
- 1.6 "Renewal Term" means a renewal term defined in a Schedule.
- 1.7 "Schedule" means any specific written document that is executed by duly authorized representatives of both parties, stating that it is intended to form a schedule to this Master Agreement.
- 1.8 "Services" means those web site design services as defined in a Schedule.
- 1.9 "Software" means the OAG Timetables computer program in executable form.
- 1.10 "Timetables" means the compilation of airline flight information data provided to Customer under this Master Agreement.

### 2 Provision of Services

- 2.1 The Timetables and, if applicable, Software will be provided by OAG to Customer in accordance with the applicable Schedule for use by Customer in accordance with the terms and conditions of this Master Agreement. The parties may modify the applicable Schedule in accordance with a written Schedule amendment, which has been executed by duly authorized representatives of both parties.
- 2.2 Once accepted by and signed by both parties, a Schedule will constitute a binding contract between the parties for the supply of the Timetables, Services, and any Software described in that Schedule. The terms and conditions of this Master Agreement, as supplemented or amended by the terms and conditions set out in that Schedule, will apply to that contract.

- 2.3 Customer may issue a written purchase order for Services to be provided and Timetables and Software to be licensed under a Schedule hereunder, which order shall reference this Master Agreement and shall indicate that it is subject to the terms and conditions of this Master Agreement. Any terms and conditions contained in a Customer purchase order or in any other document submitted by Customer which are inconsistent with the terms and conditions of this Master Agreement and/or a Schedule are inapplicable unless specifically accepted in writing by a duly authorized representative of OAG.

### 3 Charges

- 3.1 Customer shall pay OAG the Charges in accordance with the payment terms set out in clause 4.1 below, as supplemented by the applicable Schedule.

### 4 Payment

- 4.1 All Charges shall be payable in United States dollars clear of all setoffs and deductions within thirty (30) days from the date of the invoice at such address or bank account as OAG shall from time to time designate in writing. In addition to the Charges due under this Master Agreement, Customer shall pay or reimburse OAG upon demand for amounts equal to any previously unpaid taxes and tariffs resulting from this Master Agreement or any activities hereunder, including any sales or use taxes, local privilege or excise tax, tariff, duty, property tax, or assessment (excluding taxes based on OAG's net income) and related interest and penalties, if any. It shall be Customer's sole obligation to challenge the applicability of any tax.
- 4.2 Invoices not paid in full within thirty (30) days of the date of invoice are past due. Customer shall pay a late payment charge computed at a rate of the lesser of one and one half percent (1 ½ %) per month or the maximum permitted by applicable law on any unpaid amount for each calendar month or fraction thereof that payment is overdue.
- 4.3 In no event shall OAG be under any obligation to provide Timetables to Customer until all balances past due under this Master Agreement, including any accrued late charges, are paid in full.

### 5 Restrictions on Use; Grant of License; Confidentiality

- 5.1 OAG owns all right, title and interest in and to the Timetables and Software. Any copyright and/or database right in and to any and all extractions and compilations of the Timetables, Software and all other data and materials provided by OAG to Customer, in whatever form they exist, vest solely



## Master Services and License Agreement between OAG Worldwide, Inc. and City of El Paso

in OAG. All proprietary rights and interest in the physical media which embody OAG's copyrighted Timetables, Software and materials shall also vest solely in OAG. Except as expressly allowed in writing by OAG, the Timetables and Software (including extractions or compilations thereof) may not be reproduced (except for internal back-up purposes if Customer licenses Timetables or Software to reside on Customer System, and/or for printing the same in hard copy form pursuant to a Schedule hereto), distributed, displayed, transmitted or broadcast in any form (including, without limitation, print media, electronic or digital format).

- 5.2 OAG grants Customer a non-exclusive, non-transferable, revocable, world-wide license to use the Timetables and Software provided hereunder in accordance with the terms and conditions of this Master Agreement and applicable Schedule. Except as otherwise expressly provided in this Master Agreement and/or a Schedule, Customer shall not and Customer shall not permit any third party to download, copy or otherwise reproduce all or any substantial part of any Timetables or all or any part of the Software.
- 5.3 In the event Customer wishes to use any of the Timetables outside the scope of the applicable Schedule, an application must be made to OAG in writing stating the purpose for which the Timetables and Software are to be used by Customer, and no such use may commence without OAG's written approval. Customer understands and agrees that there may be additional charges for Customer's additional use of the Timetables or Software.
- 5.4 Customer shall promptly notify OAG if Customer becomes aware of any unauthorized use or copying of any Timetables or Software.
- 5.5 Customer shall not use the Timetables, Software or any part thereof, to create or distribute additional products in electronic form, print or other medium to be sold, licensed or provided to any third party.
- 5.6 This Master Agreement, including the Charges and the terms of the Schedules hereto, the Software, and all information as to the business methods or operations of OAG acquired or learned by Customer shall be treated as strictly confidential by Customer and Customer shall ensure that the same are treated as confidential by its employees and agents and are not divulged to any third party except as required by law.
- 5.7 Customer shall not remove any notices of attribution, legal or use notices, including but not limited to copyright or similar notices from any Timetables, Software, or other materials supplied by OAG pursuant to this Master Agreement or a Schedule.
- 5.8 Timetables may be used for one (1) year after the date of delivery of the same after which Customer shall destroy the same.
- 5.9 Customer will permit OAG to check at any time during normal business hours that Customer's use of the Timetables and Software is in accordance with this Master Agreement and any Schedule

and, for that purpose, OAG may enter any of Customer's premises (and Customer irrevocably licenses OAG, OAG's employees and agents to enter any of those premises for that purpose).

### **6 Term of the Agreement**

- 6.1 This Master Agreement shall be deemed to have come into full force and effect on the Effective Date and shall continue until terminated in accordance with the terms and conditions of this Master Agreement.

### **7 Termination**

- 7.1 Either party may suspend performance of, or terminate this Master Agreement or the relevant Schedule or Schedules, if the other party shall:
- (a) breach any material term or covenant of this Master Agreement or Schedule that is not capable of being remedied; or,
  - (b) breach any material term or covenant of this Master Agreement or Schedule that is capable of being remedied but which is not remedied within thirty (30) days (fourteen (14) in the case of non-payment of any sum due to OAG) after written notice thereof from the terminating party.
- 7.2 Either party may, at its option and without prior notice, terminate this Master Agreement and any Schedule hereunder effective immediately should the other party: (i) admit in writing its inability to pay debts as they become due; (ii) make a general assignment for the benefit of creditors; (iii) file or have filed against it a petition for relief under Chapter 11 of the United States Code, and fail to assume or reject this Master Agreement and applicable Schedule within sixty (60) days after such order of relief has been entered; (iv) be adjudicated by a court of competent jurisdiction as being bankrupt or insolvent; (v) seek reorganization under any bankruptcy act; (vi) consent to the filing of a petition seeking such reorganization; or (vii) have a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee, or assignee in bankruptcy or in insolvency covering all or substantially all of such party's property or providing for the liquidation of such party's property or business affairs.
- 7.3 A Schedule may be terminated by either party by giving the other party at least sixty (60) days written notice, prior to the end of an Initial Term or Renewal Term, of the notifying party's desire to terminate said Schedule. In addition to the termination provisions of Section 7.1 above, either party may terminate this Master Agreement upon written notice to the other party anytime after the date the last Schedule hereunder terminates.
- 7.4 Termination of this Master Agreement, for whatever reason, will automatically terminate all of the Schedules and Customer will cease to have any rights to use the Timetables or Software or

## Master Services and License Agreement between OAG Worldwide, Inc. and City of El Paso

receive the Services and will destroy all copies of the Timetables and Software or any portion thereof in its possession and purge all electronic versions of the same. If requested by OAG, Customer shall promptly certify in writing, signed by an authorized representative of Customer that all hard and electronic copies of the Timetables and any Software in its possession or control have been destroyed.

7.5 The termination of any particular Schedule shall not prejudice the continuance in force of any other Schedule not specifically terminated.

7.6 Termination of this Master Agreement, for whatever reason, will not affect any rights or liabilities which have accrued prior to the date of termination.

### **8 Limitation of Liability; Indemnification; Warranties**

8.1 OAG endeavours at all times to ensure that there are no errors or omissions in the Services, Timetables and Software but, save as provided below, accepts no liability for any that may exist. If there are serious errors or omissions in the Services, Software or Timetables due to the fault of OAG, OAG will, where applicable, correct, reproduce and deliver a replacement Timetables file or version of the Software or re-perform the Services at the earliest opportunity and use its reasonable efforts to fix such serious errors or omissions within forty-eight (48) hours from OAG's receipt of written notice of the same from Customer at no additional cost to Customer. In such case OAG shall have no further liability to Customer whatsoever.

8.2 IN NO EVENT SHALL OAG HAVE ANY LIABILITY TO CUSTOMER FOR ANY DIRECT, INDIRECT, PUNITIVE, CONSEQUENTIAL OR SPECIAL DAMAGES OR LOSSES SUFFERED BY THE CUSTOMER, INCLUDING ANY LOSS OF BUSINESS, REVENUE, CONTRACTS, PROFITS, OPPORTUNITY, ANTICIPATED SAVINGS OR LOSS OF GOODWILL (WHETHER DIRECT OR INDIRECT), ARISING OUT OF OR IN CONNECTION WITH THIS MASTER AGREEMENT OR A SCHEDULE, EVEN IF OAG HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

8.3 OAG MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE SERVICES, TIMETABLES, OR SOFTWARE WILL MEET THE REQUIREMENTS OF CUSTOMER; AND EXCEPT AS EXPRESSLY PROVIDED HEREIN, OAG MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES EITHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE ACCURACY, ADEQUACY OR COMPLETENESS OF THE TIMETABLES OR SOFTWARE PROVIDED AND/OR SERVICES PERFORMED HEREUNDER, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF (A) MERCHANTABILITY, OR (B) FITNESS FOR A PARTICULAR PURPOSE.

8.4 CUSTOMER REPRESENTS AND WARRANTS THAT CUSTOMER HAS THE RIGHTS TO GRANT OAG THE RIGHT TO USE DESIGNS, LOGOS OR OTHER INTELLECTUAL PROPERTY PROVIDED TO OAG BY CUSTOMER FOR PURPOSES OF PERFORMING SERVICES FOR CUSTOMER UNDER THIS MASTER AGREEMENT.

8.5 OAG's maximum total aggregate liability under or in connection with this Master Agreement and all of its Schedules, and regardless of the form of action, whether in contract or in tort, including negligence, will not exceed the total aggregate Charges Customer has paid to OAG for the specific Subscription which has given rise to any damages or losses hereunder during the twelve (12) months prior to the damage alleged to have been caused.

8.6 Except as expressly provided in this Master Agreement or any Schedule, all representations, conditions and warranties, whether express or implied (by statute or otherwise) are excluded to the fullest extent permitted by law.

8.7 Customer assumes all risk for using, and for any results it obtains, or liability it incurs, by or as a result of using the Timetables, Services and Software.

### **9. Notices**

9.1 Unless otherwise stated, notices given or required under this Agreement must be in writing and shall be deemed delivered if sent by the United States mail, certified or registered, postage prepaid, return receipt requested, by private express delivery service providing written confirmation to OAG and Customer at the respective addresses set forth below:

If to OAG:

**OAG Worldwide Inc.**  
3025 Highland Parkway  
Suite 200  
Downers Grove, Illinois 60515  
Attn: Data Sales Manager

**With a copy to:**  
**OAG Worldwide Inc.**  
3025 Highland Parkway  
Suite 200  
Downers Grove, Illinois 60515  
Attn: Manager, Contracts

If to Customer:

**City of El Paso**  
Liz Bellegarde  
6701 Convair  
El Paso, TX 79925

# Master Services and License Agreement between OAG Worldwide, Inc. and City of El Paso

## With a copy to:

### City of El Paso

Attn: Enrique Acosta  
2 Civic Center Plaza (7<sup>th</sup> Floor-Purch.)  
El Paso, TX 79901

Notices shall be deemed effective as follows:

- (a) If delivered by private express delivery service, notice shall be deemed conclusively made upon delivery by such service; or
- (b) If delivered by United States mail, notice shall be deemed conclusively made five (5) days after deposit thereof in the United States mail.

## 10 Force Majeure

- 10.1 Neither party shall be liable for any delay in performing or failure to perform any obligation under this Master Agreement or any Schedule (save for a payment obligation), to the extent that the delay or failure results from events or circumstances outside its reasonable control, including but without prejudice to the generality of the foregoing, war, riot, civil commotion, strike, lockout or any other industrial action, Act of God, storm, fire, earthquake, flood, disruption of communication systems, disruption of data feeds, electrical failure or action of government or revocation of any telecommunications authority consent. If any such event occurs then the periods in which the parties are required to perform their respective various obligations hereunder shall be extended by the period of the duration of any such event and the party so prevented from performing its obligations hereunder shall as soon as practicable give notice to the other of the occurrence of such event and of its cessation. Notwithstanding this, in the event of a delay exceeding six (6) months, either party may terminate this Master Agreement or the applicable Schedule forthwith on written notice to the other.

## 11 Assignment

- 11.1 This Master Agreement and the Schedules shall be binding upon, and shall inure to the benefit of, the parties of this Master Agreement and their respective permitted successors and permitted assignees, and references in this Master Agreement or any Schedule to a party shall include its permitted successors and permitted assignees.
- 11.2 Neither party may assign or transfer this Master Agreement or any Schedule, or any rights, licenses or obligations under them (and any attempted assignment shall be deemed null and void), except:
- (a) as approved in writing by the other party; or
  - (b) to any company which is that party's subsidiary, parent, holding company, or a subsidiary of any such parent or holding

company, so long as it remains a subsidiary, parent or holding company as the case may be; or

- (c) upon prior written notice to the other party, to any company to which all or the relevant part of its business is transferred, provided that the purchaser of the business agrees in writing to be bound by the obligations of that party under this Master Agreement and the Schedules.

## 12 Governing Law

- 12.1 This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas of the United States of America, without reference to the principles of conflict or choice of laws thereof. Each party, as a condition of entering into this Agreement, hereby (i) submits to the jurisdiction of and venue within the State of Texas, and (ii) agrees that the law of the State of Texas will apply despite any conflict or choice of law statutes, rules, or precedents that would apply to the law of any other jurisdiction.

## 13 General

- 13.1 This Master Agreement supersedes all prior agreements, arrangements and understandings between the parties, whether written or oral, in respect of its subject matter and with the relevant Schedule or Schedules constitutes the entire agreement and understanding between the parties relating to the subject matter of this Master Agreement and that Schedule except for any related agreements governing the use and disclosure of confidential information which shall be supplemented rather than superseded by this Master Agreement. This Master Agreement and its Schedules may only be modified, amended or waived by a written document signed by authorized representatives of each party. The individuals signing this Master Agreement each represents and warrants that he or she is a duly authorized representative of his or her respective organization with the full power and authority to bind his or her respective organization.
- 13.2 The terms and conditions of the Schedules are supplemental to the terms and conditions of the Master Agreement. However, in the event of any conflict between the terms and conditions of this Master Agreement and the terms and conditions of any Schedule, the Schedule shall prevail.
- 13.3 Nothing in this Master Agreement or any Schedule shall constitute or be deemed to constitute either party as agent or partner of the other for any purpose whatsoever.
- 13.4 Section headings are for convenience only and are not intended to be part of or to affect the meaning or interpretation of this Master Agreement or any Schedule. If any one or more provisions of this Master Agreement or Schedule is held to be unenforceable, such provision shall be reformed only to the extent necessary to make

## **Master Services and License Agreement between OAG Worldwide, Inc. and City of El Paso**

it enforceable, and the other provisions of this Master Agreement and Schedule will remain in full force and effect.

- 13.5 A failure or delay of either party to enforce a provision of this Master Agreement or any Schedule or a previous waiver or forbearance by either party shall not be construed as a continuing waiver of any provision of this Master Agreement or any Schedule.
- 13.6 Notwithstanding termination or expiration of this Master Agreement, the terms of Articles 1, 3, 4, 5, 8, 9, 12 and 13 and Sections 4.1, 4.2, 5.1, 5.6, 7.4 and 7.6 shall survive termination or expiration and remain in full force and effect.

**Master Services and License Agreement between OAG Worldwide, Inc. and City of El Paso**

This Agreement shall be effective on the Effective Date.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands this 23<sup>rd</sup> day February, 2005.

**CITY OF EL PASO**

**ATTEST:**

\_\_\_\_\_  
Richarda D. Momsen  
Municipal Clerk

\_\_\_\_\_  
Joe D. Wardy  
Mayor

OAG WORLDWIDE, INC.

By: \_\_\_\_\_  
J.F. Laughlin  
Vice President, Sales

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jorge Villegas  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Pat Abeln  
Director of Aviation

## **Schedule for Internet Timetables Hosted by OAG (Airport)**

### **1. Internet Timetables Hosted by OAG**

OAG will provide Customer with Timetables for passenger flight schedules departing from and arriving at Customer's airport and the City of Juarez Airport during the term of this Schedule, as such flight schedules are made available to OAG as a travel information distributor by the airlines.

### **2. Web Design Services**

Services: OAG shall assist Customer with designing the electronic pages from which the Timetables are accessed for each of the airports of the City of El Paso and the City of Juarez, which electronic pages shall be resident on OAG's hardware for purposes of third parties accessing the Timetables by means of hyperlinks on Customer's Internet site. OAG will design said electronic pages with the colors and Customer (and City of Juarez) trademarks and logos specified and as may be supplied by Customer. OAG shall own the copyright in and to such the design of the electronic pages, including the layout and format, except that Customer shall retain all right, title and interest in and to any of its trademarks, trade names, graphics, photographs, logos and any other intellectual property that Customer provides to OAG for use on such electronic pages during the term of this Schedule. Upon termination of this Schedule, OAG shall purge all of Customer's trademarks, trade names, graphics, photographs, logos or any other of Customer's intellectual property from such electronic pages. Charges for Services shall be as specified in Section 6, Charges, below. Customer acknowledges and agrees that OAG may add all legal, disclaimer, use and attribution notices to such electronic pages as required by OAG. Customer hereby represents and warrants that it has the right to: (a) grant OAG the license rights to use the trademarks, trade names, logos and other intellectual property of the City of Juarez that Customer provides to OAG for purposes of performing Services for Customer hereunder; and (b) provide Timetables via Customer's internet site for passenger flights departing from and arriving at the airport of the City of Juarez.

### **3. Permitted Purpose**

Customer may link Customer's website only to the Timetables webpage created by OAG for Customer's use. Customer shall not copy or otherwise make available any Timetables, or portion thereof, to any third party or use such Timetables except as linked internet web pages hosted by OAG.

### **4. Effective Date**

The Effective Date of this Schedule is February 23, 2005.

### **5. Term**

The Initial Term of this Schedule shall be from the Effective Date through and including February 22, 2006 (the "Initial Term"). Thereafter, the term of this Schedule may be renewed for additional one (1) year periods (each year a "Renewal Term") upon mutual written agreement of the parties.

### **6. Charges**

The Charges for the Timetables supplied during the Initial Term under this Schedule are specified in Attachment 1, Schedule of Charges, attached hereto and incorporated herein by reference.

### **8. Customer's Responsibilities**

Except as otherwise expressly provided herein, Customer shall, at its sole cost and expense, be solely responsible for developing, designing and maintaining its own Internet site and keeping in effect Internet Services Provider services and telecommunications services necessary to allow third parties access to the Timetables as contemplated hereunder.

On signature of this Schedule by both parties, the terms contained within it will constitute a Schedule to the Master Agreement entered into by the parties on September 15, 2004 (the "Master Agreement") and a

**Master Services and License Agreement between OAG Worldwide, Inc. and City of El Paso**

binding contract between the parties for the supply of the Timetables Subscription described in this Schedule. The terms and conditions of the Master Agreement, as supplemented or amended by the terms and conditions set out in this Schedule, will apply to this contract.

This Schedule shall be effective on the Effective Date.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands this 23rd day February, 2005.

**CITY OF EL PASO**

ATTEST:

\_\_\_\_\_  
Richarda D. Momsen  
Municipal Clerk

\_\_\_\_\_  
Joe D. Wardy  
Mayor

OAG WORLDWIDE, INC.

By: \_\_\_\_\_  
J.F. Laughlin  
Vice President, Sales

APPROVED AS TO FORM:

\_\_\_\_\_  
Jorge Villegas  
Assistant City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Pat Abeln  
Director of Aviation

## Master Services and License Agreement between OAG Worldwide, Inc. and City of El Paso

### Attachment 1 Schedule of Charges

Total aggregate Charges for Timetables specified in that certain Schedule for Internet Timetables between OAG and Customer shall be as follows:

El Paso Airport	\$3,540 annually
Juarez Airport	\$1,770 annually
Total annual fee for both airports	\$5,310 annually

One time set up fees

- |   |        |
|---|--------|
| ✓ airline hyperlinks for both airports    | \$ 600 |
| ✓ Customization for Ciudad Juarez Airport | \$ 600 |

Total aggregate Charges: \$6,510.00 USD